

REMARKS

Please reconsider this application in view of the above amendments and the following remarks.

- Claims 37-49 are pending.
- Claims 37-49 are rejected.

Applicant has amended the abstract as required by the Examiner.

Applicant has amended the Cross Reference section to indicate that the parent patent application has now issued as a patent.

These amendments are not new matter.

The Examiner has rejected Claims 37-49 under 35 U.S.C. § 103(a) as being unpatentable over Wang in view of Zaffaroni et al.

Applicant has thoroughly searched the disclosure of Zaffaroni et al. and cannot locate any place in Zaffaroni that teaches an ethylene-carboxylic acid copolymer. Nor can applicant find such a copolymer with 5-50 wt% of carboxylic acid monomer. Moreover, the only discussion directed at release rate in Zaffaroni appears to be directed at the ratio of acid hydrogen to esterified acidic hydrogen. Therefore, the cited combination does not teach every element of these claims. Furthermore, the Examiner has not provided facts supporting an advantage for combining the cited references; the Examiner has not indicated where that advantage is taught. Applicant do not know whether the Examiner is relying on some disclosure in Zaffaroni for this purported advantage or whether he is relying on the knowledge of one of ordinary skill in the art. If it is the former, Applicant asks that the Examiner point out where Zaffaroni teaches that advantage. If it the latter, the Examiner is taking official notice of the advantage. If so, Applicant traverses this act and asks for specific evidence that one of ordinary skill in the art would have recognized the advantage of combining the cited references. Applicant are entitled to make that request according MPEP §2144.03.

Furthermore, "in order to complete the PTO's prima facie case and shift the burden of going forward to applicant, there must be evidence (other than speculation by the PTO) that one of ordinary skill in the art would have been motivated to make the modification of the prior art necessary to arrive at the claimed subject matter." *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941, 1944 (Fed. Cir. 1992). Applicant asks for evidence to support the identified motivation.

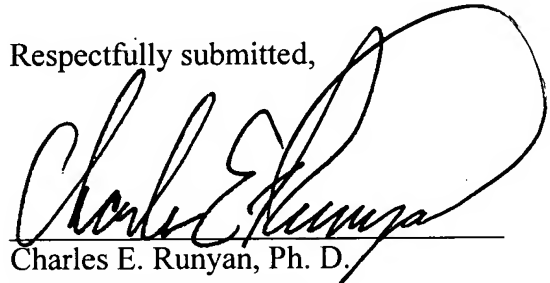
Since prima facie obviousness has not been made out, please remove this rejection.

Since all claims are in a condition for allowance, please issue a Notice of Allowability so stating. If I can be of any help, please contact me.

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CERTIFICATE OF MAILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on

Date: 01/04/05 By: Patricia J. Smith
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